

Background:

On 10 September 2023, the ICANN Board resolved (see scorecard) to not adopt select recommendations from amongst five topics contained in the New gTLD Subsequent Procedures Final Report. On 26 October 2023, the ICANN Board resolved (see scorecard) to not adopt recommendations related to one additional topic. As indicated in the ICANN Bylaws, the Council, “shall meet to affirm or modify its recommendation, and communicate that conclusion (the "Supplemental Recommendation") to the Board, including an explanation for the then-current recommendation.”

The GNSO Council convened the Small Team Plus in April 2024 to draft Supplemental Recommendation(s) to address the Board’s concerns with the non-adopted New gTLD Subsequent Procedures (SubPro) PDP recommendation on Topic 24: String Similarity Evaluations. See the [motion](#). In particular, “[t]he Board remains concerned, as previously voiced as part of its comment on the Draft Final Report, over the wording in section (a) and (c) of this Recommendation as they stipulate ‘intended use’ of a gTLD, which implies that ICANN will have to enforce the ‘intended use’ post delegation, which could be challenged as acting outside its mission.”

Herein contained are the GNSO Council’s conclusions related to recommendations not adopted by the ICANN Board.

Explanation for Recommendation

The GNSO Council sought to address the concerns of the ICANN Board by making the following amendments to the original recommendation.

To assist in addressing the Board’s concerns, the Board and ICANN org developed a proposed text which consisted of a reporting mechanism for singulars and plurals of the same word in the same language but did not contain any exceptions. The Small Team Plus began with deliberation on this proposal and spent considerable time discussing various exception details, such as for .brands or registry voluntary commitments. After extensive deliberations, including suggesting that an evaluation for non-confusion could include an “intended registrant” instead of the problematic “intended use”, the Small Team Plus agreed that it could not agree on the details of any exceptions process and instead chose to recommend to the GNSO Council that there should be no exceptions.

The GNSO Council recommends to prohibit new delegations of gTLDs consisting of singulars and plurals of the same word in the same language without exceptions. Nothing in this Supplemental Recommendation is meant to have any effects upon the rights of pre-existing gTLDs.

Draft Minority Statement:

A minority of the GNSO Council Small Team Plus members has significant reservations regarding the majority Supplemental Recommendation. The Recommendation is overly broad. Such a broad approach is not consistent with the principles of (1) Applicant Freedom of Expression as confirmed by the Sub Pro Final Report, (2) promotion of competition, or with (3) Recommendation 24.3 from Sub Pro which was intended to moderate the effect of the proposed prohibition. The Small Team Plus worked hard to develop a Supplemental Recommendation based on verification of objective criteria substantiating restricted registrant eligibility clearly enforceable by ICANN such as meeting Spec 12 or Spec 13 commitments or licensing or other professional qualifications. These restrictions were viewed as too narrow by some and perhaps too broad by others. Full consensus was not achieved. This majority Supplemental Recommendation path is also fraught with potential gaming issues and is expected to generate private negotiations between parties to prevent the proposed notifications to ICANN from taking place. Accordingly, the minority favors non-adoption of the total ban on singulars and plurals.